



Town and Country Planning Act 1990

**Town and Country Planning (Development Management Procedure) (England)
Order 2015**

REFUSAL OF PERMISSION FOR DEVELOPMENT

Application Number: 2023/62/91350/E

To: Ahmed Yaseen,
AF100 Ltd
Palmer House, 11, Virgil Street
Manchester
M15 4ED

For: Ahmed Yaseen, Af100 Ltd

In pursuance of its powers under the above-mentioned Act and Order the KIRKLEES COUNCIL (hereinafter called "The Council") as Local Planning Authority hereby refuses to permit:-

At: TEMPORARY CHANGE OF USE OF STORAGE/CARPARK SITE TO FACILITATE CATERING TRAILER AND ASSOCIATED WASTE STORAGE STORAGE YARD/CAR PARK, CANNON WAY, DEWSBURY, WF13 1XH

In accordance with the plan(s) and applications submitted to the Council on 17-May-2023. The reasons for the Council's decision to refuse permission for the development are:

1. In accordance with LP13 & LP16 of the Kirklees Local Plan and Chapter 7 of the National Planning Policy Framework, Local Planning Authorities must apply a sequential approach to Main Town Centre uses that are not in an existing centre. It is concluded that the application has failed to demonstrate a sequential approach and that the proposal would not harm the viability and vitality of nearby Town Centres. To grant the proposal would be contrary to Policies LP2 and LP13 (a, b) & LP16 of the Kirklees Local Plan, and Chapter 7 of the National Planning Policy Framework.

2. The application has failed to demonstrate through a sequential risk based approach that the development has been directed to an area at the lowest probability of flooding. The proposal is therefore contrary to Policy LP27 of the Kirklees Local Plan, the Planning Practice Guidance 'Flood risk and coastal change' and policies within Chapter 14 of the National Planning Policy Framework.

3. The application has failed to demonstrate through submission of adequate noise and odour assessment reports that the proposed development would not be harmful to public amenity and living conditions of future and neighbouring occupiers. To grant planning permission would be in breach of Policies LP16(b), LP24b and LP52 of the Kirklees Local Plan, and policies within Chapter 12 of the National Planning Policy Framework.

4. The proposed hot food takeaway is located within a deprived area (worse 20 to 30%), with a high proportion of adults overweight and a high prevalence of diabetes. The development does not meet the threshold for being acceptable on public health grounds and is considered to have a potentially adverse impact upon public health. To grant planning permission would be contrary to Policy LP16 of the Kirklees Local Plan and The Hot Food Takeaway Supplementary Planning Document.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location plan	Dwg No. 23-005-PL01	-	09.05.2023
Existing site plan	Dwg no. 23-005-PL02		09.05.2023
Proposed site plan	Dwg no. 23-005-PL03	Rev A	09.05.2023
Proposed access and Parking plan	Dwg no. 23-005-PL08		05.07.2023
Proposed floor plan	Dwg no. 23-005-PL04		09.05.2023
Proposed internal layout	Dwg no. 23-005-SK01	Rev A	05.07.2023
Proposed elevations	Dwg no. 23-005-PL05		09.05.2023
Supporting information:			
Flood risk assessment			09.05.2023
Outdoor lighting datasheet			05.07.2023
Mains supply distance plan	Drawing No. 23-005-SK04	-	05.07.2023
Indicative outdoor lighting layout drawing	Dwg no. 23-005-PL07	-	05.07.2023
Outdoor lighting data sheet 2			05.07.2023
Waste Management layout dwg	Dwg no 23-005-PL06	Rev A	05.07.2023
Project details document dated June 2023			05.07.2023
Climate change statement			09.05.2023
Planning statement / covering letter dated 5th May 2023.			09.05.2023

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. Further information was received during assessment of the application but was not considered to overcome the concerns about the principle of the proposal.

Development within a Coal Mining Area

The proposed development lies within an area that has been defined by the Coal Authority as containing coal mining features at surface or shallow depth. These features may include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such features are seldom readily visible, they can often be present and problems can occur, particularly as a result of new development taking place.

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority

Digital Infrastructure: Fibre to The Property (FTTP)

Access to affordable and reliable broadband is necessary for Kirklees' residents, businesses, and visitors to take advantage of the growing digital economy and 'digital by default' services. Fibre optic cables direct to a property (FTTP) is the most reliable way of delivering high speed broadband connectivity and allows for gigabit internet speeds. Access to high quality digital infrastructure provides the foundations for, amongst other things:

- Economic prosperity – workforces that are digitally-literate enables business to thrive.
- Digital literacy – digital literacy and skills increase employability and people can exploit the internet for transactional, social, entertainment and learning purposes.
- New services – digital delivery can lower costs and provide innovative public and health services more conveniently.

It is therefore advised that digital infrastructure, including FTTP, and its benefits for the development be considered from the earliest feasible stage. Methods include working with Internet Service Providers to install digital infrastructure alongside other utilities or providing pre-infrastructure allowing for speedier installation at a later date.

To discuss the benefits that FTTP may have for your development, please contact Carl Tinson in Kirklees Council's Digital Team at carl.tinson@kirklees.gov.uk

Note: The provision of fibre infrastructure is often available from certain telecommunications providers free of charge for development over a certain scale, provided that sufficient notice is given. Notice periods are typically at least 12 months prior to first occupation. In some cases, providers may request a contribution from the developer.

Note: Where no telecommunications provider has been secured to provide fibre infrastructure by the time of highway construction, it is advised that additional dedicated telecommunications ducting is incorporated alongside other utilities to enable the efficient and cost-effective provision of fibre infrastructure in the future.

The application has been publicised by notice(s) in the vicinity of the site. It is respectfully requested that the notice(s) now be removed and responsibly disposed of to avoid harm to the appearance of the area

Appeals to the Secretary of State

- If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If an enforcement notice is served or has been served relating to the same or substantially the same land and development as in your application and if you want to appeal against the local planning authority's decision on your application, then you must do so within:
 - i) 28 days from the date of this notice where the enforcement notice has been served,
 - ii) 28 days of the date of service of the enforcement notice or,
 - iii) the specified period starting from the date of this notice,whichever period expires earlier.
- If you want to appeal against your Local Planning Authority's decision then you must do so within the specified period, starting on the date of this notice.
- The "specified period" is 12 weeks where the development relates to a "minor commercial application" as defined within the Town and Country Planning (Development Management Procedure) Order 2010 (as amended), or 6 months in any other case.
- Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at [the Planning Inspectorate website](#)
Further information on the Planning Appeal process can be found online at [the Planning Inspectorates website](#)
- You must use the correct Planning Appeal Form when making your appeal. If requesting forms from the Planning Inspectorate, please state the type of application that the appeal relates to so they can send you the appeal form you require.
- The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based their decision on a direction given by him.

Please note, only the applicant possesses the right of appeal.

Purchase Notices

- If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

An important part of improving our service is to review your feedback on the way that we have dealt with your planning application(s). Please take a couple of minutes to email your comments to dc.admin@kirklees.gov.uk so that we can work on continually improving our customer service. Thank you.

Dated: 04-Aug-2023

Signed:



David Shepherd
Strategic Director Growth and Regeneration

Decision Documents

The decision notice indicates which documents relate to the decision. These documents can be viewed online at the [Kirklees Planning Website](#), by clicking on the 'search and view existing planning applications and decisions' and by searching for application number 2023/62/91350/E.

If a paper copy of the decision notice or decided plans are required please email dc.admin@kirklees.gov.uk or telephone 01484 414746 with the application number. There may be a charge for this service.

All communications should be sent to one of the following address:

E-mail: dc.admin@kirklees.gov.uk

Write to: Kirklees Council
Planning and Development Service
PO Box 1720
Huddersfield
HD1 9EL

